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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW,
Washington, DC 20423-0001

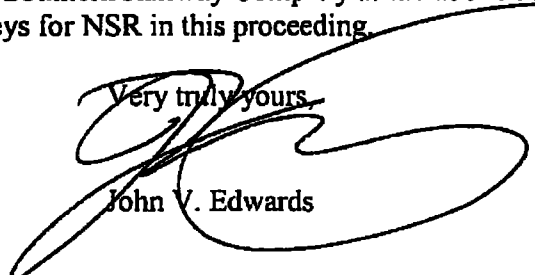
Re: STB Docket No. AB-290 (Sub-No. 311X), Norfolk Southern Railway Company -
Petition for Exemption - Abandonment of Rail Freight Service Operation - In the
City of Baltimore, MD and Baltimore County, MD

Dear Ms. Brown:

I attach for electronic filing the Reply of Norfolk Southern Railway Company Motion to Strike in the subject proceeding.

Also, and as noted in the accompanying Reply to Motion for Protective Order, in addition to me, Daniel G. Kruger, Attorney, Norfolk Southern Railway Company at the above address, should be added to the service list as attorneys for NSR in this proceeding.

Very truly yours,


John V. Edwards

Attachment

cc via email : jimriffin@yahoo.com
James Riffin
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-290 (SUB-NO. 311X)

NORFOLK SOUTHERN RAILWAY COMPANY –
- PETITION FOR EXEMPTION –
ABANDONMENT OF RAIL FREIGHT SERVICE OPERATION –
IN THE CITY OF BALTIMORE, MD AND BALTIMORE COUNTY, MD

NORFOLK SOUTHERN RAILWAY COMPANY'S
MOTION TO STRIKE

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Dated: January 14, 2010

**Before the
Surface Transportation Board**

STB Docket No. AB-290 (Sub-No. 311X)

**Norfolk Southern Railway Company
– Petition for Exemption –
Abandonment of Rail Freight Service Operation –
In the City of Baltimore, MD and Baltimore County, MD**

**Norfolk Southern Railway Company's
Motion to Strike**

Norfolk Southern Railway Company ("NSR") hereby moves to strike four filings submitted to the Surface Transportation Board ("Board") on January 5, 2010 by James Riffin ("Riffin"), Zandra Rudo, Carl Delmont, Louis Lowe and Eric Strohmeyer (collectively, the "Offerors"). Specifically, NSR moves to strike each of the Notice of Intent to Participate as a Party of Record ("Participation Notice of Intent"); Notice of Intent to File an Offer of Financial Assistance ("OFA Notice of Intent"); Motion for a Protective Order Pursuant to 49 CFR 1104.14 ("Motion for Protective Order"); and Comments and Opposition to Request for Exemption from the Offer of Financial Assistance Procedures ("Comments").

Each of the four documents is submitted in violation of the Board's rules of practice, and, if allowed to stand, would constitute a violation of the fundamental right of due process under the law and an affront to the administrative process. It would be arbitrary and capricious for the Board to consider pleadings, such as those NSR seeks to strike, that are submitted by a person or persons incapable of being identified, and otherwise knowingly so in violation of the Board's

rules and regulations as these pleadings are, particularly in light of the experience the Board has had with the person(s) involved.¹

Motions to strike are not often granted, particularly as to evidence, because generally the motions are interpreted as commenting on the weight to be granted to evidence rather than the admissibility of that evidence, and because the Board often desires to have the most complete record upon which to make its decision. The failures evident in the documents submitted by the five Offerors, however, go far beyond that of the weight or credibility to be granted to certain evidence. Instead, the failures go to the fundamentals of the administrative process, to the extent that demands to produce information are being received from persons unidentified and unidentifiable. No evidence can be weighed, no arguments can be evaluated, no decisions can be made that would not be arbitrary and capricious based upon the pleadings as submitted to date.

MOTIONS TO STRIKE AND ARGUMENT

Notice of Intent to Participate as a Party of Record

The Participation Notice of Intent is filed by five persons, namely James Riffin, Zandra Rudo, Carl Delmont, Lois Lowe and Eric Strohmeyer. Of these five persons, only James Riffin is identified more particularly, by reference to a mailing address. That mailing address further identifies Riffin as a well-known frivolous litigant.² A person by the name of Eric Strohmeyer

¹ See, 49 C.F.R. 1114.6 (the Board may take official notice of records in other Board proceedings).

² See e.g. *Baltimore County, Maryland v. Riffin*, Civil Action No. RDB-07-2361, United States District Court For the District of Maryland, Memorandum Opinion of October 4, 2007; *James Riffin - Petition for Declaratory Order*, STB Finance Docket No. 35245 (STB served September 15, 2009), petition for review filed November 12, 2009; *Norfolk Southern Railway Company - Abandonment Exemption - In Norfolk and Virginia Beach, VA*, STB Docket

has appeared before the Board in the past, identifying himself as a Vice President of "CNJ Rail Corporation," a company that has no other identified officers, no identified assets or operations (not to mention no identified *rail* assets or operations),³ no identified corporate structure or existence independent of the imagination of Mr. Strohmeyer. But nothing in the Participation Notice of Intent identifies the signatory of the Participation Notice of Intent as the same Mr. Strohmeyer associated with CNJ, so there is no way to know for sure who that Offeror is. The four other persons are identified solely by name. No address is provided and no company association listed.

It appears from this document alone as if the individual "Offerors" or "Protestants" intend to participate in their individual capacities. If this is the case, then the Participation Notice of Intent should be stricken from the record except as to Riffin, the only person

No. AB-290 (Sub-No. 293X) (STB served Nov. 6, 2007, Dec. 6, 2007); *James Riffin d/b/a The Northern Central Railroad - Acquisition and Operation Exemption - In York County, PA*, STB Finance Docket No. 34552, *slip op.* at 6 (STB served Feb. 23, 2005). In *Norfolk Southern Railway Company - Abandonment Exemption - In Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 293X) (STB served November 6, 2007), the Board noted Riffin's improper efforts to harass "NSR into conveying the freight operating rights of the Cockeysville Line to Mr. Riffin." The Board stated: "Accordingly, we will closely scrutinize any future filings by Mr. Riffin in this or any other proceeding before the Board, and we strongly admonish Mr. Riffin that abuse of the Board's processes will not be tolerated."

We do not cite the consolidated cases from Baltimore County, MD District Court in which Riffin was declared a frivolous and vexatious litigant and ordered to seek leave from the administrative judge of the District Court before filing "any pleadings." In *Riffin v. Circuit Court for Baltimore County*, No. 2939, September Term, 2008, Court of Special Appeals of Maryland, 2010 Md. App. LEXIS 6, filed January 5, 2010, the Court vacated the order and remanded the cases to the Circuit Court for Baltimore County for further proceedings because the order did not afford Riffin the due process right of notice and an opportunity for him to be heard before the issuance of the pre-filing order.

³ In *Maryland Transit Administration - Petition for Declaratory Order*, STB Finance Docket No. 34975 (STB served September 19, 2008), the Board noted: "Notwithstanding the name it has chosen, CNJ does not own any rail assets or conduct any rail operations."

sufficiently identified on the public record. See 49 C.F.R. 1104.1(b) (“The address of the person filing the pleading should be included on the first page of the pleading”) and 49 C.F.R. 1104.4(b) (“The original of each document not signed by a practitioner or attorney must be ... (2) Accompanied by the signer’s address....”). See also, 49 C.F.R. 1112.4(b) (a petition to intervene must identify the petitioner’s interest in the proceeding), 49 C.F.R. 1112.8 (the capacity of the person(s) signing a pleading must be indicated), and 49 C.F.R. 1104.12 (requiring service to be made on all Parties unless represented by a practitioner or attorney, in which case service upon the practitioner or attorney is sufficient). The reason for the Board’s requirements are obvious – due process and the proper functioning of the administrative procedure requires all parties to be able to understand who is participating, in part to understand both the context in which the pleadings are made and to gauge the credibility of allegations therein.

Of course, read in the context of the OFA Notice of Intent, the Comments and the Motion for Protective Order, it is possible that these individuals actually intend to act in some manner as a collective to jointly purchase certain rights and agreements now held by NSR. See, e.g., OFA Notice of Intent at Paragraph 1. If this is the case, then the identification of the collective and their association – that is, the identification of the “person” actually submitting the pleading – is necessary. This is particularly true in the case of an offer of financial assistance, where the Board is tasked to determine whether the “person” submitting the pleading is a “financially responsible person” under the statute.⁴

Allowing the Offerors to participate in any proceeding pursuant to their Participation

⁴ Of course, whether a person is a financially responsible person is something that is to be determined, in part, on the basis of the offer itself, there is a significant amount of activity prior to the submission of an offer, including the demand for information.

Notice of Intent is tantamount to allowing the Offerors to dictate in the future how and under what conditions they will exercise their purported offer of financial assistance, and the Board will have failed to fulfill its responsibilities pursuant to 49 U.S.C. 10907. For example, in a previous proceeding, Riffin ultimately purported to have a 98% interest in a limited liability company formed to acquire a rail line and two other individuals each had a 1% interest. Thereafter, with no explanation concerning the disposition of the interests of the other two individuals, Riffin began a continuing campaign to have the rail line reconveyed to him personally. After his request for this reconveyance was refused by CSXT and rejected by the Board, he took the matter to the United States Court of Appeals for the District of Columbia Circuit.⁵ In this case, the situation would be infinitely more convoluted. There has been no identification of a limited liability company or any other company or association among the individual Offerors, not to mention discussion of whether there even exists a relationship between the purported Offerors.⁶

⁵ *CSX Transportation, Inc. - Abandonment Exemption - In Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served Apr. 24, 2008) (*Allegany County*), appeal docketed sub nom. Riffin v. STB, No. 08-1208 (D.C. Cir. May 29, 2008). See also the summary of the Allegany Line proceeding in *James Riffin - Petition for Declaratory Order*, STB Finance Docket No. 35245 (STB served September 15, 2009), appeal docketed sub nom. Riffin v. STB, No. 09-1277 (D.C. Cir. Nov. 12, 2009).

⁶ The current situation is distinguished from that facing the Board in *Consolidated Rail Corporation - Abandonment Exemption - In Hudson County, NJ*, STB Docket No. AB-167 (Sub-No. 1190X) (STB served May 26, 2009). In that proceeding, the Board determined that Conrail's argument that CNJ was not a financially responsible party because CNJ had not yet filed an actual OFA. Although it is not clear to the undersigned the CNJ is, in fact, an actual entity with any assets whatsoever, and not simply a paper corporation, that issue was not before the Board in that proceeding. In the case now before the Board, on the other hand, there is nothing submitted to sufficiently identify the person or persons making the submissions to enable the public process to proceed in an orderly manner. There is no way to distinguish whether certain persons identified as an "Offeror" are, in fact, non-parties rather than parties. Compare 49 C.F.R. 1101.2(d) (defining a "Party" and distinguishing between a "Party" and a person who

Because the Offerors failed to provide sufficient material to identify the person submitting the Participation Notice of Intent, and because the Offerors failed to comply with the Board's regulations regarding the submission of pleadings, the Participation Notice of Intent should be stricken from the record. 49 C.F.R. 1104.10(a) ("The Board may reject a document, submitted for filing if the Board finds that the document does not comply with the rules.").

Further, even if the Board determines not to strike the Participation Notice of Intent, it must strike Paragraph 3 thereof. The Board's regulations are clear that, although persons acting in their own capacity may submit pleadings, only attorneys and practitioners may represent others. Compare 49 C.F.R. 1104.4(a) (a party represented by a practitioner or an attorney) with 49 C.F.R. 1104.4(b) (all others). A party represented by a practitioner or an attorney is represented by one who is governed generally by the Board's Canons of Ethics, 49 C.F.R. 1103, Subpart B. A person who submits a document in his or her individual capacity is not necessarily subject to the Board's Canons of Ethics, but otherwise is subject to criminal law sanctions for knowingly submitting false information to an agency of the United States. 18 U.S.C. 1001(a); 49 C.F.R. 1104.5(c). Riffin implicitly acknowledges that he cannot represent the other Offerors, for in his verification in Paragraph 10 of the Motion for Protective Order, he leaves out the required statement that "Further, I certify that I am qualified and authorized to file this [document]." 49 C.F.R. 1104.5(b). For the same reason, the Board must strike footnote 1, for if identified persons cannot be represented by a person who is not a practitioner or an attorney, neither can a group of

is not a "Party". Further, in the Hudson County proceeding, whether the entity CNJ was or was not a financially responsible person is an issue to be determined by the Board, based upon material and arguments submitted to the Board. That is a far cry from actually knowing the identity of the person or persons submitting material and arguments to the Board, and whether that person or persons is a party or non-party.

as yet unidentified persons.

Allowing participation by Zandra Rudo, Carl Delmont, Louis Lowe and Eric Strohmeyer through Riffin would be to permit the participation of persons in an administrative proceeding without any of the safeguards for that have long been the hallmark of the United States administrative process, grounded in due process.⁷ Even if the Board decides not to strike the remaining portions of the Participation Notice of Intent, the Board must strike Paragraph 3 thereof. For the same reasons, footnote 1 must be stricken.

Additionally, footnote 1 must be stricken because it implicitly constitutes a motion to amend in the future without leave of the Board. If additional parties are able to join the ranks of "Offerors" without leave of the Board, the Board would delegate its obligations under 49 C.F.R. 1104.11 (placing leave to amend any document within the discretion of the Board).

⁷ In *Edwin Kessler - Petition For Injunctive Relief*, STB Finance Docket No. 35206 (STB served June 12, 2009), the Board did not find it necessary to rule on assertions that Riffin secretly prepared and filed Kessler's pleadings with the Board in that proceeding. Nonetheless, Kessler and Riffin did not deny the assertions. In that proceeding, the Board stated:

we remind Kessler that if he chooses to file a complaint, the complaint and all subsequent filings must be prepared and signed (1) by an attorney, see 49 CFR 1103.2; (2) by a registered non-attorney practitioner who has successfully completed the practitioner's examination, see 49 CFR 1103.3; or (3) by Kessler himself. Only attorneys or non-attorney practitioners may represent others in Board proceedings.

See also Central Kansas Railway, L.L.C. - Abandonment Exemption - In Reno, Kingman, Harper, Rice and McPherson Counties, KS, STB Docket No. AB-406 (Sub-No. 13X) (STB served August 14, 2001); *Union Pacific Railroad Company - Abandonment - In Morgan County, CO (Julesburg Subdivision)*, Docket No. AB-33 (Sub-No. 86) (STB served January 30, 1997); *Missouri-Kansas-Texas Railroad Company - Abandonment - In St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper And Pettis Counties, MO*, Docket No. AB-102 (Sub-No. 13) (ICC Decided February 12, 1991).

Notice of Intent to File an Offer of Financial Assistance

The OFA Notice of Intent should be stricken for the same reasons as set forth above with regard to the Participation Notice of Intent. The argument for striking this pleading, however, is even stronger, for it contains allegations that are completely incapable of being verified. See, e.g., Paragraph 2 (“The Offerors are financially responsible persons....”). If the Offerors cannot be identified by the material submitted on the public record, the Board cannot be found to have made an informed decision as to whether the persons, either in their individual or collective persona, are financially responsible persons. Further, if the Offerors are acting in some collective manner, and the nature of that collective is not apparent by the material submitted on the public record, the Board cannot be found to have made an informed decision as to whether that collective persona is a financially responsible person.

In addition, should the Board determine not to strike the OFA Notice of Intent, the Board must strike Paragraph 5 and Footnote 1 of the OFA Notice of Intent. The same reasoning that supports striking Paragraph 3 and Footnote 1 of the Participation Notice of Intent supports striking Paragraph 5 and Footnote 1 of the OFA Notice of Intent.

Should the Board determine not to strike the OFA Notice of Intent, the Board should strike any demands made in Paragraph 4 for the provision of information pursuant to 49 U.S.C. 10904. Compliance with Paragraph 4 would require the provision of information to persons unidentified, and unidentifiable, and to persons that are yet to be identified.⁸

⁸ NSR reserves the right to object to any information request on the basis other than is set forth herein. Responses and objections to individual requests can only be served on, and in the context of, a person that is participating in this proceeding as a party, and with regard to the knowledge of in what capacity that party is participating. At this time, the identify of the “Offerors” and the capacity in which they are participating is purely speculative.

There is an additional reason for striking Footnote 1 of the OFA Notice of Intent. Pursuant to 49 C.F.R. 1104.6, documents for filing must be filed within certain time limits. All documents submitted must identify the parties for whom the documents are submitted. The Board cannot determine whether a currently unidentified person, to be identified at some indeterminate time in the future and either participating in their individual capacity or as a member of a collective, is a party or non-party. The OFA Notice of Intent contains demands for the provision of information, and NSR should not be required to provide information to persons yet to be identified.

Motion for Protective Order

The Motion for Protective Order should be stricken for the same reasons as set forth above with regard to the Participation Notice of Intent and the OFA Notice of Intent. Footnote 1 of the Motion for Protective Order should be stricken for the same reasons set forth above with regard to Footnote 1 in the Participation Notice of Intent and the OFA Notice of Intent.

In addition, the Motion for Protective Order should be stricken for violation of 49 C.F.R. 1104.4(b)(3). That regulation requires submissions by one not authorized to represent others before the Board to be verified if it contains allegations of fact. Paragraphs 3, 4, 5 and 6 are allegations of fact submitted to support imposition of a protective order. The allegations, which contain irrelevant, immaterial, impertinent and scandalous material, are subject to the verification of only one person, and not by the person purportedly submitting the document, the collective group identified as the "Offerors". Further, Paragraph 3 contains allegations of fact that are not relevant to the issue of whether a Protective Order should be required, and therefore should be

stricken.

Should the Board decide not to strike the Motion in its entirety, the Board should strike the following sentence from Paragraph 8: "Norfolk Southern has taken no position with regard to The Offerors's [sic] request for a Protective Order." This affirmative statement is false and misleading, implying that Norfolk Southern was presented with the request for a Protective Order, and took no position in response thereto. That simply is not the case. Because one cannot take a position on a matter of which it is not aware, and because Riffin did not present the protective order to NSR prior to submitting it to the Board and making the allegation made in the sentence reproduced, the verification made by Riffin in Paragraph 10 is rendered a nullity and should be stricken.

The Motion for Protective Order is submitted on behalf of either the Offerors, as an unidentifiable collective, or on behalf of five persons individually, only one of whom has signed the pleading, and four of whom are not identified other than by name. The Motion for Protective Order does not conform to 49 C.F.R. 1104.4(b)(3), and should be stricken. If the Board determines not to strike the Motion for Protective Order, it should strike Paragraphs 3, 4, 5 and 6, and the identified sentence in Paragraph 8.

Comments and Opposition to Request for Exemption

The Comments should be stricken for the same reasons set forth above with regard to the Participation Notice of Intent, the OFA Notice of Intent, and the Motion for Protective Order (including the fact that, with regard to the Comment, the submission contains objectionable allegations of fact in Paragraphs 7 through to the end of the document, without verification from

any of the Offerors, including Riffin, either in their individual or collective personifications). Should the Board decide not to strike the Comments, it must strike Footnote 1 and all allegations of fact in the pleading, which have been submitted in violation of the Board's rules.

CONCLUSION

For the reasons set forth above, NSR moves to strike each of the Participation Notice of Intent, the OFA Notice of Intent, the Motion for Protective Order and the Comments. Should the Board decide not to strike each of these pleadings, the Board should strike the paragraphs, footnotes and allegations of fact described in more detail above. As to the person apparently drafting and submitting the document on behalf of others, Riffin has long been a participant in proceedings before the Board, and knows the Board's regulations.⁹ It is unclear who the other persons are, or whether they even exist. Finally, by submitting this Motion to Strike, NSR reserves all rights it has to comment or reply to each of the pleadings that is the subject hereof.

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

By: 

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Dated: January 14, 2010

⁹ See Supra, note 3.

VERIFICATION

I, Marcellus C. Kirchner, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Motion to Strike.

Executed on this 14th day of January, 2010.



Marcellus C. Kirchner

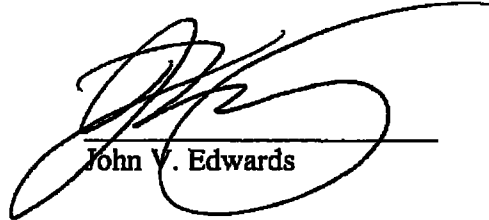
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document on:

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Via e-mail on this 14th day of January, 2010.



John V. Edwards